

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 678 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

HIRALAL MULJIBHAI RAJPUT

Versus

SARASVATIBEN K RAJPUT

Appearance:

THROUGH JAIL for Petitioner

SERVED for Respondent No. 1

MR. ST MEHTA, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/02/97

ORAL JUDGEMENT

This petition is preferred by the husband who has failed to pay maintenance to his wife, respondent No.1 for over a period of six years.

Under order dated 3-3-94 made by the learned

Magistrate, the petitioner has been sentenced to suffer three years' Simple Imprisonment on account of his failure to pay maintenance for a period commencing from 8th December 1986 to 9th December 1993. The first proviso to section 125(3) provides that no warrant shall be issued for recovery of any amount due under that section unless an application was made to court to levy such amount within a period of one year from the date on which it became due. Undoubtedly the application was made on 9th December 1993. The said application for levy of amount due since 8th December 1986 could not have been entertained in view of the above-referred proviso. The learned Magistrate, therefore, has erred in sentencing the petitioner for the amount of maintenance due since 8th December, 1986. The learned Additional Sessions Judge has also erred in confirming the above-referred order of the learned Magistrate without considering the provisions contained in section 125(3) of the Code. In view of the same, the judgment and order passed by the learned Magistrate on 3-3-94 sentencing the petitioner to suffer imprisonment for three years and confirmed by the learned Additional Sessions Judge, Baroda on 30th April, 1994, under order made on Criminal Revision Application No.42 of 1994 is hereby quashed and set aside. The petitioner, if not required in any other case, be released forthwith. Petition is allowed accordingly.

Rule is made absolute. Writ to be sent forthwith.
